

# CITY OF FAYETTEVILLE REQUEST FOR PROPOSALS



## OAKRIDGE ESTATES FENCE COF1516788

ISSUED: MARCH 20, 2023

DUE: APRIL 17, 2023

The City of Fayetteville is soliciting proposals for fencing around a portion of the perimeter of Oakridge Estates.

ISSUED BY:  
CITY OF FAYETTEVILLE

PRIMARY CONTACT:  
KIMBERLY TOON,  
PROCUREMENT MANAGER  
[kimberlytoon@fayettevillenc.gov](mailto:kimberlytoon@fayettevillenc.gov)

(910) 433-1942

OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.



**A message from the City of Fayetteville City Manager, Douglas J. Hewett, ICMA-CM**

The City of Fayetteville is fully committed to provide Small Local Business Enterprises (SLBE's) an equal opportunity to participate in all aspects of City contracting including, but not limited to participation in the procurement of contracts relating to the construction of and improvements to facilities throughout the City. It is also the policy of the City to prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, sex, color, religion or national origin and to conduct its contracting and purchasing programs so as to prevent such discrimination. The City is also committed to follow all applicable State and Federal law as they relate to procurement practices.

The City will actively seek and identify qualified SLBE's and offer them the opportunity to participate in the procurement of contracts for all City purchasing and service contracts as well as construction and repair contracts.

The City aspires to spend 40% of its eligible contract dollars with small local suppliers and contractors. Towards this end the City's Charter has been amended by the General Assembly (H.B. 198) to allow the City to establish a race and gender neutral small business enterprise program to promote the development of small local businesses. The City is authorized to establish bid and proposal specifications that include subcontracting goals and good-faith effort requirements to enhance participation by small business enterprises located in Cumberland and Hoke Counties.

For more information or questions about the SLBE policy, please contact the Purchasing Division at 910-433-1942.

**CITY OF FAYETTEVILLE**

  
Kelly Olivera  
Assistant City Manager

## NOTICE TO BIDDERS

Pursuant to N.C.G.S. 143-129 sealed proposals will be received by the City of Fayetteville, until **2:00 p.m., April 17, 2023** at City Hall, 433 Hay Street, Fayetteville, North Carolina, at which time they will be considered for the purchase of the following:

### **Oakridge Estates Fence**

Bids may be mailed to the City Purchasing Office, Attn: Kimberly Toon, 433 Hay Street Fayetteville, NC 28301, or may be delivered in person or by express mail to 433 Hay Street, Fayetteville, NC 28301

The bid opening will be held at **2:00 p.m. on April 17, 2023** at City Hall, 433 Hay Street, Fayetteville, NC 28301, for the project entitled, **“Oakridge Estates Fence.”**

Plans, specifications and bid documents may be obtained in the Purchasing Office of the City of Fayetteville, 2<sup>nd</sup> floor, City Hall, 433 Hay Street, Fayetteville, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday or by email request to [kimberlytoon@fayettevillenc.gov](mailto:kimberlytoon@fayettevillenc.gov)

The right is reserved to reject any or all bids and to waive all informalities concerning bid or award bid to the lowest, responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

**City of Fayetteville**

Kimberly Toon, CLGPO  
Purchasing Manager



## **PURPOSE**

The City of Fayetteville seeks to procure a contractor to provide and install fencing around a portion of the perimeter of Oakridge Estates. This RFP describes the projects and requirements.

### **1. SCOPE**

This RFP contains instructions governing the required content of proposals, terms governing this procurement process, a description of the services sought by the City of Fayetteville, requirements that a proposer must satisfy to be eligible for consideration, evaluation criteria, standard contract terms and conditions, and other requirements that must be satisfied for the proposal.

### **2. PROJECT DELIVERABLES:**

Deliverables for this engagement consist of the following:

#### **A. Fencing Specifications**

1. Contractor shall provide and install a commercial-grade metal fence:
  - a. A three-rail spear top below flattop;
  - b. 60" tall x 72" wide;
  - c. 1 1/4" rails;
  - d. 3/4"x 3/4" pickets;
  - e. Post 2"x2"x .125;

**Appendix A** is a photograph that depicts the type of fencing required for the Oakridge Estates project.

**Appendix B** is a rendering of the Oakridge Estates location at issue. The redlined overlay shows the area to be fenced to be located.

#### **B. Site Work**

Installation of posts and fencing. Contractor is responsible for clearing and grubbing for proper installation of the fencing.

#### **C. Miscellaneous Deliverables for the Contractor**

1. Ensure that all work is performed by skilled professionals and executed professionally in accordance with the best standards and practices of the trade;
2. Complete all work and provide all materials, tools, equipment, and safety devices necessary to perform work properly within the specified time. The Contractor shall complete the entire work to the satisfaction of the City of Fayetteville and in accordance with the specifications herein described at an agreed-upon price. All the work, labor, and equipment to be completed and provided under the Contract shall be completed and provided strictly pursuant to, and in conformity with, the specifications described herein and any directions of the City of Fayetteville representatives as given during the progress of the work, under the terms of this Contract;



3. Perform the work in such a manner as to minimize inconvenience to building occupants. The Contractor shall determine the City of Fayetteville's normal working conditions and activities in progress and conduct the work in the least disruptive manner;
4. Provide safety devices and take such other precautions as may be necessary to protect life and property at the company's own expense;
5. Bear all losses resulting to it or to the City of Fayetteville due to any inadequacy in the quality of work performed or due to any error on the part of Contractor in its estimation or expectation of project requirements;
6. Shall not subcontract any portion of the Contract without prior written approval from the City of Fayetteville. In the event that the City of Fayetteville approves the use of subcontractors, Contractor is responsible for the actions of the subcontractor and is not relieved of its obligation to meet all the requirements of this agreement; and
7. The City of Fayetteville shall require correcting defective work or damages to any part of the building or its appurtenances caused by the Contractor's employees, approved subcontractors, equipment, or supplies. The Contractor shall correct all defective work and repair damages incurred. Upon failure of the Contractor to proceed promptly with the necessary corrections, the City of Fayetteville may withhold any amount necessary to correct all defective work or repair damages from payments to the Contractor.

#### **D. Davis-Bacon Act**

The Davis-Bacon Act applies to each federal government or District of Columbia contract in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Many federal laws authorizing federal assistance for construction through grants, loans, loan guarantees, and insurance are Davis-Bacon "Related Acts." The "Related Acts" include provisions that apply Davis-Bacon labor standards to most federally assisted construction. Examples of "Related Acts" include the Federal-Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.

##### **1. Basic Provisions/Requirements**

Contractors and subcontractors must pay laborers and mechanics employed directly upon the site of the work at least the locally prevailing wages (including fringe benefits) listed in the Davis-Bacon wage determination in the Contract for the work performed. Davis-Bacon labor standards clauses must be included in covered contracts.

The Davis-Bacon "prevailing wage" is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination. The Contractor's obligation to pay at least the prevailing wage listed in the contract wage determination can be met by paying each laborer and mechanic the applicable prevailing wage entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits. Prevailing wages, including fringe benefits, must be paid on all hours worked on the work site.

Apprentices or trainees may be employed at less than the rates listed in the contract wage determination only when they are in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department.

Contractors and subcontractors must pay covered workers weekly and submit certified payroll records to the contracting agency. They are also required to post the applicable Davis-Bacon wage determination with the Davis-Bacon poster (WH-1321) on the job site in a prominent and accessible place where the workers can easily see them.

## 2. Davis-Bacon Wage Determinations

Davis-Bacon wage determinations are published on the System for Award Management (SAM) website at <https://sam.gov/content/wage-determinations> for contracting agencies to incorporate into covered contracts. The "prevailing wages" are determined based on wages paid to various classes of laborers and mechanics employed on specific types of construction projects in an area. Guidance on determining the type of construction is provided in All Agency Memoranda Nos. 130, 131, and 236.

## **E. System for Award Management (SAM) Requirement**

The Contractor is required to register at <https://sam.gov> to obtain a Unique Entity Identifier (UEI) to ensure the entity is not suspended or debarred.



## Appendix A





## Appendix B



 Fence Line





"General Decision Number: NC20230090 01/06/2023

Superseded General Decision Number: NC20220090

State: North Carolina

Construction Type: Highway

Counties: Brunswick, Cumberland, Currituck, Edgecombe, Franklin, Greene, Hoke, Johnston, Nash, New Hanover, Onslow, Pender, Pitt, Wake and Wayne Counties in North Carolina.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> <li>Executive Order 14026 generally applies to the contract.</li> <li>The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.</li> </ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"> <li>Executive Order 13658 generally applies to the contract.</li> <li>The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at



Paver Concrete.....\$ 18.20  
 Roller Asphalt Breakdown....\$ 12.45 \*\*  
 Roller Asphalt Finish.....\$ 13.85 \*\*  
 Roller Other.....\$ 11.36 \*\*  
 Scraper Finish.....\$ 12.71 \*\*  
 Scraper Rough.....\$ 11.35 \*\*  
 Slip Form Machine.....\$ 16.50  
 Tack Truck/Distributor  
 Operator.....\$ 14.52 \*\*

## TRUCK DRIVER

GVWR of 26,000 or Less.....\$ 11.12 \*\*  
 GVWR of 26,001 Lbs or  
 Greater.....\$ 12.37 \*\*

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

## Union Rate Identifiers

- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"

Project:	Oakridge Estates Fence Installation				Project No.:
Owner:	City of Fayetteville				
Offeror:					
<b>Base Bid</b>					
Item No.	Item Description	Unit	Estimated Quantity	Unit Price	Extended Amount
<b>Items in Base Bid (excluding Allowances)"Measurement and Basis for Payment"</b>					
A-01	Mobilization	LS	1		
A-02	Traffic Control	LS	1		
A-03	Permits	LS	1		
A-04	Fence and Installation	LF	2410		
					\$ -
Total Base Bid Items Amount (Sum of Extended Amounts for each Base Bid Line Item) in Writing:					
<b>BID SUBMITTED BY:</b>					
Offeror:					
Signature:					
Printed Name:					
Title:					
Date:					



**CITY OF FAYETTEVILLE  
GENERAL CONTRACTING AGREEMENT**

This agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023 between \_\_\_\_\_ henceforth known as "Contractor," and the **City of Fayetteville**, henceforth known as "City."

Pursuant to the work described in the **Proposal (Exhibit A)** provided by \_\_\_\_\_ the Contractor and City agree to the following:

**Section 1  
The Work**

The Contractor and City agree that the following scope of work will be done for:

**Total Project Bid:** \_\_\_\_\_

**Section 2  
Timeline**

The Contractor and City agree that the work detailed above will be completed according to the following timeline:

Work Start: \_\_\_\_\_  
Work Completion: \_\_\_\_\_

Any delays that arise during the course of the work must be discussed with City immediately.

**Section 3  
Payment**

City agrees to pay the Contractor a total of \_\_\_\_\_ payable in the following manner:

**Within thirty (30) days of receipt of invoice following completion and approval of the final product.**

**Section 4  
Changes**

Any changes made to plans, materials used, time needed, or any other portion of the work must be discussed with City prior to any decisions.

**Section 5  
Permits**

Contractor agrees to secure any permits necessary so that this work will be done within the parameters of the laws of **North Carolina**. Contractor agrees that any fees for these permits are already included in the total amount charged to the City.

## **Section 6 Workers**

Contractor agrees that any laborer, subContractor and/or employee that he/she hires for the purposes of this job is legally permitted to work in this country.

Contractor is an independent contractor, and has no authority to act as an agent of City, nor enter into any contract or agreement for or on behalf of City. Contractor is not an employee of City and is not entitled to any benefits provided employees of City, including, but not limited to, workers' compensation, medical care, leave benefits and retirement. Contractor shall be responsible for the payment of all federal, state, and local taxes that may be due as a result of this Agreement.

## **Section 7 SubContractors**

City agrees that the Contractor may hire subContractors at his/her discretion, provided that Contractor agrees that the payment for said subContractor is entirely the Contractor's responsibility. City is not in any way liable for a subContractor's missed payment.

## **Section 8 Insurance Requirements**

The Contractor shall not commence work under this Agreement until he has obtained all insurance required under this paragraph, and such insurance has been approved by the City Attorney, nor shall the Contractor allow any subContractor to commence work on his subcontract until all similar insurance has been so obtained and approved. See Other Provisions Section (2) (c) below titled "SubContractor."

The insurance required for this Agreement is as follows:

(a) **Commercial General Liability:** The Contractor shall take out and maintain during the life of this Agreement commercial general liability insurance with limits of \$1,000,000 per occurrence; \$2,000,000 aggregate other than products/completed operations; \$2,000,000 aggregate for products/completed.

(b) **Commercial Automobile Liability:** The Contractor shall take out and maintain during the life of this Agreement commercial automobile liability insurance with limits of no less than \$250,000 per person, \$500,000 per occurrence for bodily injury and \$1,000,000 for property damage for owned, non-owned, and hired automobiles.



(c) Workers' Compensation and Employers' Liability Insurance: If the Contractor employs three or more employees, the Contractor shall take out and maintain during the life of this Agreement workers' compensation insurance with limits for Coverage A Statutory – State of North Carolina, as required by the laws of the State of North Carolina, and Coverage B Employers' Liability with limits of \$500,000 each accident and policy limit, including occupational disease coverage with limits of \$500,000 for each employee, for all employees employed on the project. In case any employee(s) engaged in work under this Agreement is or are not protected under the Workers' Compensation Statute, the Contractor shall provide adequate coverage for the protection of employees not otherwise protected.

#### Acceptability of Insurance

All insurance policies shall be written by insurers licensed to do business in North Carolina. It is realized that certain business activities may not be readily insurable by admitted carriers. If insurance is written by non-admitted carriers whose names appear on the current listing of approved and non-admitted carriers prepared by the North Carolina Department of Insurance, such carriers will be favorably considered assuming they meet all other requirements. Non-admitted carriers should be so identified on the Certificate of Insurance form. The City reserves the right to reject any and all certificates or policies issued by insurers with an A.M. Best's Financial Strength Credit Rating less than A.

#### Indemnity Provision

To the extent permitted by law, the Contractor agrees to defend, indemnify and hold harmless the City, its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage caused by any act, omission or negligence of the Contractor, its agents, servants, employees, contractors, licensees, or invitees. Indemnification of the City by the Contractor does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law. Contractor assumes entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of any injury, or alleged injury (including death) to any person, or damage, or alleged damage, to property of the City or others sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the negligence of the Contractor, his subContractor, agents, and employees, in the performance of the work/service set forth in the Standard Specifications and Special Provisions, and any changes, addenda, or modifications including losses, expenses or damages sustained by the City, and agrees to indemnify and hold harmless the City, its officials, employees or volunteers from any and all such losses, expenses, damages, demands and claims and agrees to defend any suit or action brought against them, or any of them, based on any such alleged injury or damage, and to pay all damages, cost and expenses in connection therewith or resulting therefrom. As an integral part of this Agreement, Contractor agrees to purchase and maintain during the life of this Agreement contractual liability insurance in the amount required in the general liability insurance requirements and to furnish proper evidence thereof.

#### Other Provisions:



- (1) Any deductible or self-insured retention must be declared to and approved by the City.
- (2) The policies are to contain, or be endorsed to contain, the following provisions:

- (a) Commercial General Liability Coverage

- 1) The City, its officials, employees and volunteers are to be covered as additional insureds with respect to the following: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

- 2) The Contractor's insurance coverage shall be primary insurance covering the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

- 3) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- (b) All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Contractor, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to:

City Purchasing Office  
P.O. Box 1089  
Fayetteville, NC 28301

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, and volunteers. In the event the City is damaged by the failure of the Contractor to maintain such insurance and to so notify the City, the Contractor shall bear all reasonable costs properly attributable thereto.

- (c) SubContractors

Contractor shall include all subContractors as insurers under its policies OR shall furnish separate certificates and endorsements for each subContractor. All coverages for subContractors shall be subject to all of the requirements stated

herein.

(d) No Waiver of Immunity

Any insurance coverage required by the terms of this Agreement shall not be deemed a contract of insurance purchased by the City nor a waiver of the City's immunity pursuant to NCGS 160A-485.

**Section 9**  
**Cleanup**

Contractor agrees that any debris, equipment, etc. will be removed from the area upon completion of the job. The location will be returned to the state in which it was found prior to the work, excepting, of course, the changes made as a result of the work.

**Section 10**  
**Terms and Conditions**

**CITY'S TERMS SUPERSEDE:** To the extent a conflict exists between the terms of this Agreement and the terms and conditions in any of the attachments to the Agreement, the terms of this Agreement shall govern.

**Section 11**  
**E-Verify**

Contractor acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. Contractor further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). Contractor pledges, attests and warrants through execution of this contract that Contractor complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by Contractor shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this contract.

**Section 12**  
**Other Provisions**

**Binding Effect** - This Agreement shall be binding on and inure to the benefit of the parties hereto, their successors and assigns.

**Nondiscrimination** - The Contractor agrees not to discriminate by reason of age, race, religion, color, sex, national origin, disability or other applicable law while performing the services required herein. The Contractor further agrees not to discriminate in accordance with federal and state laws



while performing the services required herein.

Morality Clause - If, in the sole opinion of the City, at any time Contractor or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the City's finances, public standing, image, or reputation or are embarrassing or offensive to the City or may reflect unfavorably on the City or are derogatory or offensive to one or more employee(s) or customer(s) of the City, the City may immediately upon written notice to Contractor terminate this Agreement, in addition to any other rights and remedies that the City may have hereunder or at law or in equity.

Assignment - It is the intent of this Contract to secure the personal services of Contractor and failure of Contractor for any reason to make the personal services available to the City of Fayetteville for the purposes described in this contract shall be cause for termination of this contract. Contractor shall not assign this contract without prior written consent of the City of Fayetteville.

Governing Law - The validity, interpretation and execution of this Agreement and the performance of and right accruing under this Agreement are all to be governed by the laws of North Carolina.

Venue and Forum Selection - The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

Compliance with Laws - Contractor agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government.

Entire Agreement - This Agreement constitutes the entire agreement between the parties. Any proposed change to this Agreement shall be submitted to the City for its prior approval. No modification, addition, deletion, etc., to this Agreement shall be effective unless and until such changes are reduced to writing and executed by the authorized officers of each Contractor.

Severability - The parties agree that if any provision of this Agreement shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform to the purposes of this Agreement and the requirements of applicable law.

Non-Appropriation Clause - Notwithstanding any other provisions of this contract, the parties agree that payments due hereunder from the City are from appropriations and monies from the City Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the City to pay the terms of this agreement for any fiscal year, this



contract shall terminate immediately without further obligation of City of Fayetteville.

Force Majeure - Neither Party shall be deemed to be in default of its obligations hereunder if and *so long as* it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

Termination for Cause - In the event of substantial failure by Contractor to perform in accordance with the terms of this contract, City of Fayetteville shall have the right to terminate Contractor upon ten calendar (10) days written notice in which event Contractor shall have neither the obligation nor the right to perform further services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed.

Termination for Convenience - Upon thirty (30) calendar days' written notice to Contractor, the City of Fayetteville may, without cause and without prejudice to any other right or remedy legally available to the City of Fayetteville, terminate this Contract. Upon such notice, Contractor shall have neither the obligation nor the right to perform services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed in accordance with the terms stated herein. In such case of termination, Contractor shall be paid for the completed and accepted work executed in accordance with this Contract prior to the written notice of termination. Additionally, upon mutual agreement, Contractor may be paid for any completed and accepted work which takes place in order to achieve a specifically identified item in the scope of services or a milestone of the Contract, between the written notice of termination and the effective date of termination. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur 30 days' after the written notice is sent by the City of Fayetteville.

Protest - Protest related to this procurement must be addressed to the Purchasing Manager for City of Fayetteville, 433 Hay St, Fayetteville, NC 28301 and shall be received, in writing, within 2 calendar days of bid award. Responses will be in writing by email and first-class mail not later than (7) calendar days following receipt of said protest by the Purchasing Manager.

Iran Divestment Act Certification - As mandated by N.C.G.S. 147-86.59(a), Contractor hereby certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. Vendor further certifies that in accordance with N.C.G.S. 147-86.59(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. Contractor certifies that the signatory to this Request for Proposals is authorized by the Contractor to make the foregoing statement.

Survival of Terms - All warranties, covenants, and representations contained within this contract and all applicable work authorizations, if any, shall continue in full force and effect for three (3) years after the execution and delivery of the final product, act, or service taken in furtherance of this contract. Survivability shall not be impacted, or otherwise shall not be rendered null or void, by the termination or natural expiration of this contract or other applicable work undertaken in furtherance of this contract.



Attest:

**CITY OF FAYETTEVILLE:**

\_\_\_\_\_  
PAMELA MEGILL  
City Clerk

\_\_\_\_\_  
KELLY OLIVERA  
Assistant City Manager

\_\_\_\_\_  
Date

**VENDOR**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Vendor Signature

This instrument has been pre-audited in the manner  
Required by the Local Government Budget and Fiscal  
Control Act.

\_\_\_\_\_  
JODY PICARELLA  
Chief Financial Officer

## EXHIBIT A

SAMPLE



## **FEDERAL TERMS AND CONDITIONS**

### **DISCLAIMER OF FEDERAL GOVERNMENT OBLIGATIONS OR LIABILITY**

The Contractor, and any subcontractors acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract. It is further agreed that the clause shall be included in each subcontract and shall not be modified, except to identify the subcontractor who will be subject to its provision.

### **PROTEST PROCEDURES**

Protests related to this procurement must be addressed to the City of Fayetteville, 433 Hay St, Fayetteville, NC 28301 and shall be received, in writing, within 5 calendar days of bid award. Responses will be supplied not later than (7) calendar days following receipt of said protest. A protester must exhaust all administrative remedies before pursuing a protest with the Federal grantor agency. Reviews of protests by the Federal grantor agency are limited to:

- (1) Violations of federal law or regulations and the standard of this section (violations of state or local law will be under the jurisdiction of state and local authorities) AND
- (2) Violations of the grantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal grantor agency other than those specified above will be referred to the grantee.

### **ACCESS TO RECORDS AND REPORTS**

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

The following access to records requirements apply to this Contract:

Where the Purchaser is not a State but a local government and is the Federal Recipient or a sub grantee of the Federal Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the Federal grantor agency, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the Federal grantor agency or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

Where any Purchaser which is the Federal grant recipient or a sub grantee of the Federal grant recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Federal grantor agency and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the Federal grantor agency, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

### **FEDERAL CHANGES**

49 CFR Part 18

Contractor shall at all times comply with all applicable Federal regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Commission and the Federal grantor agency, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

- (1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal



Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

31 U.S.C. 3801 et seq.  
49 CFR Part 31 18 U.S.C. 1001  
49 U.S.C. 5307

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the Federal assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### **CIVIL RIGHTS**

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements the Federal grantor agency may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements the Federal grantor agency may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the Federal grantor agency may issue.



(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements the Federal grantor agency may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance, modified only if necessary to identify the affected parties.

#### **ENERGY CONSERVATION REQUIREMENTS**

42 U.S.C. 6321 et seq.

49 CFR Part 18

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

#### **COMPLIANCE WITH FEDERALLY REQUIRED CLAUSES AND REQUIREMENTS**

Contractor (bidder) is responsible for ensuring its compliance with all applicable Federal requirements. Additionally, Contractor is responsible for ensuring that subcontractors, at as many tiers of the Project as required, perform in accordance with the terms, conditions and specifications of the contract, including all applicable Federal requirements. Upon request of the City of Fayetteville or the Federal government, Contractor shall provide evidence of the steps it has taken to ensure its compliance with the Federal requirements, as well as evidence of the steps it has taken to ensure subcontractor performance, and/or submit evidence of subcontractor's compliance, at all tiers.

#### **AMERICANS WITH DISABILITIES ACT (ADA)**

Americans with Disabilities Act (ADA). The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements the Federal Government. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

#### **PRIVACY ACT**

5 U.S.C. 552

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance.

#### **CIVIL RIGHTS REQUIREMENTS**

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

The Recipient agrees to comply with all applicable civil rights laws and implementing regulations including, but not limited to, the following:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each sub recipient at any tier of the Project, with the provisions



of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each sub recipient at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FEMA determines otherwise in writing, the Recipient also agrees to comply with any applicable implementing Federal directives that may be issued.

c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier of the Project and each sub recipient at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and implementing Federal regulations and any subsequent amendments thereto. Except to the extent FEMA determines otherwise in writing, the Recipient also agrees to comply with any applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Recipient agrees as follows:

(a) The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) If the Recipient is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. Failure by the Recipient to carry out the terms of that EEO program shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification to the Recipient of its failure to carry out the approved EEO program, the Federal Government may impose such remedies as it considers appropriate, including termination of Federal assistance in accordance with Section 11 of this Master Agreement, or other measures that may affect the Recipient's eligibility to obtain future Federal assistance for transportation Projects.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each third party contractor at any tier or sub recipient at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

(3) Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by DBEs in the Project and assures that each third party contractor at any tier of the Project and each sub recipient at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore:

c. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.

d. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.

e. Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be



accessible to individuals with disabilities. In addition, the Recipient agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FEMA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations.

f. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.

g. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that FEMA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 *Fed. Reg.* 6733 *et seq.*, January 22, 2001.

h. Environmental Justice. The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

i. Other Nondiscrimination Laws. The Recipient agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination that are applicable, except to the extent the Federal Government determines otherwise in writing.

#### **LOBBYING**

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix



Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]** - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

#### **CLEAN AIR**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

#### **CLEAN WATER**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

#### **RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION**

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of The City of Fayetteville's Director of Legal, Risk, and Procurement Services. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City of Fayetteville's Director of Legal, Risk, and Procurement Services. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City of Fayetteville's Director of Legal, Risk, and Procurement Services shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by The City of Fayetteville, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of



any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Fayetteville and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which The City of Fayetteville is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Fayetteville, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### **CONTRACTOR ASSURANCE**

The Contractor, by submitting a proposal, shall adhere to all the applicable Federal provisions listed above. Failure to comply with Federal provisions shall be considered a breach of contract.

### **CONTRACT WORK HOURS AND SAFETY STANDARDS**

**1. Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

**3. Withholding for unpaid wages and liquidated damages** - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

**4. Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

### **DEBARMENT AND SUPENSION**

The Contractor, by submitting a proposal, certifies that to the best of its knowledge that they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department agency; have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining attempting to obtain, or performing a public transaction or contract under public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in the above statements of this section; have not within a three-year period preceding this application/proposal had one or more public transactions terminated for default.

### **DRUG-FREE WORK PLACE**

The Contractor, by submitting a proposal, shall adhere Federal Drug Free Workplace requirements as outlined in 2 C.F.R. 182.

Contractor shall make good faith efforts to maintain a drug-free workplace, publish workplace statement and establish drug-free awareness programs for employees. Contractor should take action concerning who are convicted of violating drug statutes in the work place. Contractor shall contact the City of Fayetteville if Contractor cannot adhere to the requirements of the Federal Regulations noted above. Failure to comply provisions shall be considered a breach of contract.